

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	§	
	§	
	§	CASE NO. 08-35653
CIRCUIT CITY STORES, INC., <i>et al.</i> ,	§	
	§	CHAPTER 11
DEBTOR.	§	
	§	Jointly Administered

**SECTION 546(B) NOTICE OF INTEREST IN PROPERTY OF
CIRCUIT CITY STORES, INC.**

The Parkes Companies, Inc. d/b/a Parkes Construction ("Parkes") files this Section 546(b) Notice of Interest in Property of Circuit City Stores, Inc., respectfully showing the Court as follows:

1. Circuit City Stores, Inc. and its affiliates (the "Debtors") each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on November 10, 2008 ("Petition Date").

2. In July 2008, Parkes furnished materials, labor, and/or equipment necessary to complete the construction of a new retail facility described as Circuit City Store #3858, located at 14623 IH-35 North. Lot #3, The Villages at Forum Parkway, Live Oak, Bexar County, Texas, 78233 (the "Property"). The Property is more specifically described in the Affidavit for Mechanic's and Materialman's Lien, and the attachments affixed thereto, which was filed in the public records of Bexar County, Texas on November 25, 2008, an executed copy of which is attached hereto as Exhibit "1."

3. Parkes furnished the aforementioned materials and equipment and performed labor and services during July, 2008, pursuant to a contract between Parkes and the Debtor.

4. The aggregate amount of Parkes' lien, as more fully supported by Parkes' Affidavit for Mechanic's and Materialman's Lien is \$96,324.95.

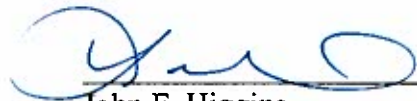
5. Though Parkes believes that the above-described lien is properly perfected and that no further notice is required, out of an abundance of caution, and pursuant to § 546(b) of the Bankruptcy Code, Parkes hereby files this Notice.

6. All of the materials, equipment and labor furnished by Parkes were provided in July, 2008. Pursuant to § 53.052(a) of the Texas Property Code, in order to perfect its liens, Parkes has four (4) months from the date the relevant indebtedness accrues to file its lien affidavit with the county clerk.

7. Pursuant to § 546(b) of the Bankruptcy Code, notice must be given within the time allowed under state law for perfection of an interest in property. Because this Notice is being filed within such time, this Notice is timely.

WHEREFORE, Parkes respectfully requests that this Court accept this Notice of Interest in Property of Circuit City Stores, Inc., and grant such other and further relief to which Parkes is entitled.

Respectfully submitted this 26th day of January 2009.



John F. Higgins
State Bar No. 09597500
Joshua W. Wolfshohl
Texas State Bar No. 24038592
Porter & Hedges, L.L.P.
1000 Main Street, 36th Floor
Houston, Texas 77002
(713) 226-6000
(713) 226-6287 - Fax

**Attorneys for The Parkes Companies,
Inc. d/b/a/ Parkes Construction**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served by United States mail postage prepaid on this the 26th day of January, 2009, to the parties listed below.

Counsel to the Debtors

Gregg M. Galardi, Esq.
Ian S. Fredericks, Esq.
Skadden, Arps, Slate, Meagher & Flom, LLP
One Rodney Square
PO Box 636
Wilmington, DE 19899-0636

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Chris L. Dickerson, Esq.
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333 West Wacker Drive
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Counsel to the Debtors

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Douglas M. Foley, Esq.
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One James Center
901 E. Cary Street
Richmond, VA 23219

United States Trustee

Robert B. Van Arsdale, Esq.
Office of the United States Trustee
Richmond, Virginia Office
701 East Broad Street, Suite 4304
Richmond, VA 23219-1888


Joshua W. Wolfshohl

**MEMORANDUM CLARIFYING THE PROPERTY INTEREST ATTACHED BY THE
PARKES COMPANIES, INC.'S PERFECTED AFFIDAVIT FOR MECHANIC'S AND
MATERIALMAN'S LIEN**

THE STATE OF TEXAS

§



LT1-81-20080251948-1

COUNTY OF BEXAR

§
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BEFORE ME, the undersigned authority, on this day personally appeared Denise L. Nestel, who upon his oath did depose and state as follows:

"My name is Denise L. Nestel and I am a resident of Harris County, Texas. I am an attorney licensed to practice law in the State of Texas. I am over 18 years of age, have personal knowledge of the facts set forth below and am competent and authorized to make this Affidavit.

On November 14, 2008, I caused an Affidavit for Mechanic's and Materialman's Lien ("the Affidavit") to be recorded in the real property records of Bexar County, Texas on behalf of The Parkes Companies, Inc. d/b/a Parkes Construction against the property known as Circuit City Store #3858, located at 14623 IH-35 North, Lot #3, The Villages at Forum Parkway, Live Oak, Bexar County, Texas 78233. A true and correct copy of the Affidavit is attached hereto as **Exhibit 1**. Pursuant to Chapter 53 of the Texas Property Code, the Lien has been properly perfected. The Affidavit states that the owner or reputed owner of the property is SWQ 35/FORUM, LTD. and/or Circuit City Stores, Inc.

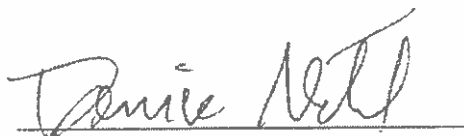
Subsequent to filing the Affidavit, we were contacted by a representative of SWQ 35/FORUM, LTD., who advised us that Circuit City Stores, Inc. is a lessee of the property and that the actual owner of the property is SWQ 35/FORUM, LTD. This Memorandum is being filed to clarify that Circuit City Stores, Inc. is the lessee and not the actual owner of the property. **Accordingly, the Affidavit for Mechanic's and Materialman's Lien attaches only to the leasehold interest of Circuit City Stores, Inc. on the subject property.**

One (1) copy of this Memorandum is being sent by Certified Mail, Return Receipt Requested to the actual owner, SWQ 35/FORUM, LTD, and its registered agent, Kim S. Fredenburg, addressed to the owner's last known address at 3102 Maple Ave, Suite 500, Dallas, Texas 75201. One (1) copy of this Memorandum is being sent by Certified Mail, Return Receipt Requested to the lessee, Circuit City Stores, Inc., addressed to its last known address at 9950 Mayland Drive, Richmond, Virginia 23233. One (1) copy of this Memorandum is being sent by Certified Mail, Return Receipt Requested to Circuit City Stores, Inc.'s registered agent, Prentice Hall Corp. System, at 701 Brazos Street, Suite 1050, Austin, Texas 78701."

SWORN TO AND EXECUTED on this the 19th day of November 2008.



By:

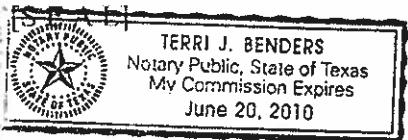
A handwritten signature in dark ink, appearing to read "Denise Nestel", written over a horizontal line.

Name: Denise L. Nestel, Esq.
Porter & Hedges, L.L.P.
1000 Main Street, 36th Floor
Houston, Texas 77002

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §


BEFORE ME, the undersigned Notary Public, on this day personally appeared Denise L. Nestel, known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged to me that such person executed the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said company, and further swore that the foregoing was true and correct.

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO on this the 19th day of November, 2008.



My Commission Expires:

June 20, 2010



Notary Public in and for the State of Texas

Printed Name:

Terri J. Benders

After recording, return to:
Denise L. Nestel, Esq.
Porter & Hedges, L.L.P.
1000 Main Street, 36th Floor
Houston, Texas 77002
(713) 226-6612

AFFIDAVIT FOR MECHANIC'S AND MATERIALMAN'S LIEN

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared David Parkes, who upon his oath did depose and state as follows:

"My name is David Parkes and I am the Vice President of **The Parkes Companies, Inc. d/b/a Parkes Construction**, hereinafter referred to as 'Claimant.' I am over 18 years of age, have personal knowledge of the facts set forth below and am competent and authorized to make this Affidavit on Claimant's behalf.

Claimant's physical and mailing address is 105 Reynolds Road, Franklin, Williamson County, Tennessee 37064.

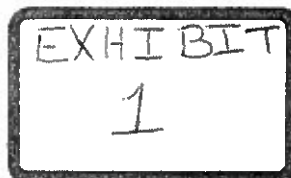
Pursuant to a Contract by and between Claimant and **Circuit City Stores, Inc.**, Claimant has provided materials, labor and/or equipment generally described as furnishing and installing all equipment, tools, materials, labor and/or supervision necessary to complete the construction of a new retail facility on the real property described herein. The project is known as **Circuit City Store #3858**, located at 14623 IH-35 North, Lot #3, The Villages at Forum Parkway, Live Oak, Bexar County, Texas 78233.

Claimant is the Original Contractor for the improvements for which a lien is claimed.

The Owner or reputed Owner of the property is **SWQ 35/FORUM, LTD.** and/or **Circuit City Stores, Inc.** The last known business address of SWQ 35/FORUM LTD. and its registered agent, Kim S. Fredenburg, is 3102 Maple Ave, Suite 500, Dallas, Texas 75201. The last known business address of Circuit City Stores, Inc. is 9950 Mayland Drive, Richmond, Virginia 23233. The registered agent for Circuit City Stores, Inc. is Prentice Hall Corp. System, at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

After allowing all just and lawful credits, offsets and payments, the amount of **\$96,324.95** remains unpaid and said sum is due and owing to Claimant under said Contract. The amount claimed is just and correct and constitutes the reasonable value of the materials furnished and labor performed. Claimant claims a lien on said property and improvements under the provisions of Chapter 53 of the Texas Property Code and a constitutional lien on said property and improvements under the provisions of Article 16, Section 37 of the Texas Constitution to secure payment of the above amount. This amount does not include any attorney's fees, interest or costs, which may be recovered at law.

The Claimant provided the unpaid labor, material and/or equipment to the Project during the month of July, 2008.



A true and correct copy of the pay application reflecting said unpaid amount due and owing to Claimant is attached hereto as Exhibit A and incorporated herein by reference. The real property sought to be charged with such lien by Claimant is described as set out in the real property description attached hereto as Exhibit B and incorporated herein by reference.

One (1) copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to SWQ 35/FORUM, LTD. and its registered agent, Kim S. Fredenburg, addressed to the last known address as described above. One (1) copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to Circuit City Stores, Inc., addressed to the last known address as described above. One (1) copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to Circuit City Stores, Inc.'s registered agent, Prentice Hall Corp. System, addressed to the last known address as described above."

SWORN AND EXECUTED on this the 12TH day of November, 2008.

**THE PARKES COMPANIES, INC. D/B/A
PARKES CONSTRUCTION**

By: 

Name: David Parkes

Title: Vice President

THE STATE OF TENNESSEE §
§
COUNTY OF WILLIAMSON §

BEFORE ME, the undersigned Notary Public, on this day personally appeared David Parkes of The Parkes Companies, Inc. d/b/a Parkes Construction, known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged to me that such person executed the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said limited partnership, and further swore that the foregoing was true and correct.

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO on this the 12th day of November, 2008.

[S E A L]

Notary Public: Patsy S. Parkes

My Commission expires: 7/22/09

After recording, return to:

Denise L. Nestel
Meghann E. McConnell
Porter & Hedges, L.L.P.
1000 Main Street, 36th Floor
Houston, Texas 77002



My Commission Expires JULY 22, 2009

Doc# 20080251948 Fees: \$36.00
11/25/2008 10:12AM # Pages 6
Filed & Recorded in the Official Public
Records of BEXAR COUNTY
GERARD RICKHOFF COUNTY CLERK

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on this date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property of Bexar County, Texas on:

NOV 25 2008



Gerard Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS